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American Can Company

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July 14, 1983

Deborah K. Woitte, Esquire
Office of Enforcement Counsel-Waste
LE 134-S
United States Environmental
Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Re: 9th Avenue Site
Gary, Indiana

Dear Miss Woitte:

By letter dated June 10, 1983, Mr. Kirk F. Sniff, Acting Associate Enforcement Counsel for Waste, requested that American Can Company "submit all information relating to transactions between [it] and Steve Martell or Liquid Engineering Company, involving the storage, treatment, transport or disposal of hazardous wastes or substances from 1973 to the present". */ The information requested involved the nature and chemical character of the materials or substances generated by our operation located at 6017 South Western Avenue, Chicago, Illinois, as well as a list of haulers, a description of any site investigation or inspection, and a description of any incidence of spills or contamination at the site. The purported authorities for this request were Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9604, and Section 3007 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 9627. We believe that there are serious questions with regard to the nature and scope of this information request and its statutory basis, as well. Pending

*/ Mr. Sniff indicated that answers to the information sought had to be in your office by July 1, 1983. During our telephone conversation on July 7, 1983, I informed you that this letter had been sent to our Chicago operation, which, in turn, forwarded it to me, and that my response to Mr. Sniff's letter would not arrive until possibly the week of July 10, to which you agreed.

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resolution of these questions and clarification of the information request, we respectfully decline to submit any information pursuant to that request.

Section 3007 of RCRA requires any person, who generates, stores, treats, disposes of, or handles hazardous wastes, to furnish, upon request, information relating to such wastes to the Environmental Protection Agency ("EPA"). And the purposes for which such information may be requested are specified in this section. Section 104(e) of CERCLA also involves the production of information, and its language is identical to that of § 3007 in all material respects, with one possible exception.

The language of § 104(e) differs from § 3007 only with respect to the circumstances under which information must be furnished. Unlike § 3007, section 104(e) does limit the obligation of a person generating hazardous substances to furnish information. Such obligation is limited to the situation where it is "necessary to ascertain facts not available at the facility where such hazardous substances are located..." This language clearly does not enlarge the authority of EPA to request information nor the scope of the information that must be furnished. Rather, it would appear that EPA must demonstrate not only that the information it seeks is not otherwise available at the disposal site itself but also that such information is in the possession of the person to whom the request is made. Thus, as a practical matter, a full and accurate response to your information request cannot be made until after a review of whatever data you already possess.

Notwithstanding any differences that may exist between the wording of these sections, neither would appear to authorize EPA to require persons engaged in any activity involving hazardous wastes or substances to furnish the broad range of information you have requested. With the possible exception of the first request relating to the nature and chemical character of the material, all of the other requested information does not fall, in our opinion, within the purview of "information relating to the wastes or substances." Clearly, these statutory provisions do not authorize, for example, identification of haulers, production of invoices, contracts, etc., or descriptions of site activities or accidents. Furthermore, this information request is rather excessive and unduly burdensome and does not appear to be reasonably related to any legitimate interest EPA might have in determining the need for response to an actual or threatened release or in enforcing the provisions of CERCLA or RCRA.

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Moreover, the Agency is already in possession of information relating to the nature of the material generated at this operation. In August, 1980, the form entitled "Notification of Hazardous Waste Activity" (EPA Form 8700-12 (6-80)) was submitted to EPA-Region V, and on such form were listed the types of wastes generated. The period for which you have sought information is from 1973 to the present, but as the types of waste generated by this operation during this period have not changed, the information supplied in the Notification of Hazardous Waste Activity would be accurate for this period. */

Inasmuch as EPA has requested from American Can Company information with respect to this site, it, undoubtedly, is already in possession of information of some sort. Coupled with the data on the hazardous waste activity form, EPA should have sufficient information regarding any material American Can Company allegedly shipped to this site. Furthermore, our search of available files did not uncover any records relating to the site, Mr. Steve Martell, or to Liquid Engineering Company.

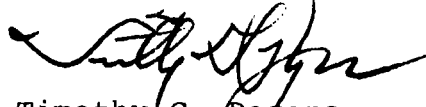
Accordingly, we are unable to provide any information in connection with your request. Further, we respectfully decline to make any additional inspection of our files and records and to produce any documents we might subsequently discover in order to respond to your request for information unless EPA (1) furnishes to American Can Company any information it already possesses; (2) can demonstrate that records from the 9th Avenue Site do not furnish sufficient information with respect to the materials allegedly shipped by American Can Company to this site; and (3) can demonstrate that it has the statutory authority to request information from the company in addition to whatever it already has in its possession.

*/ Mr. Sniff's letter required that any response to his letter be notarized and certified as true and correct. We are unable to find any authority for this requirement and decline to do so. Besides, the Hazardous Waste Activity Form did contain a certification which was signed before its submission.

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Any future communications or information requests in connection with this matter should be addressed to the undersigned.

Very truly yours,



Timothy G. Rogers

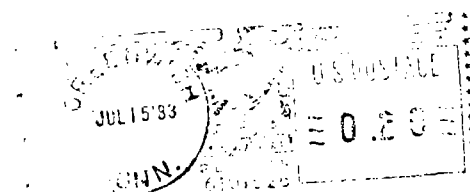
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